



BellSouth Telecommunications, Inc.

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Joelle J. Phillips
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August 24, 2001

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition of MCI WorldCom to Enforce Interconnection Agreement with
BellSouth*
Docket No. 99-00662

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to MCImetro Access Transmission Services, Inc.'s Motion for Sanctions for Failure to Comply with TRA Order. Copies of the enclosed are being provided to counsel of record for MCI.

Very truly yours,



Joelle Phillips

JP/jej

Enclosure

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

In Re: *Petition of MCI WorldCom to Enforce Interconnection Agreement with BellSouth*

Docket No. 99-00662

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE
TO MCIMETRO ACCESS TRANSMISSION SERVICES, INC.'S
MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH TRA ORDER**

BellSouth Telecommunications, Inc. ("BellSouth") files this Response to MCImetro Access Transmission Services, Inc.'s Motion for Sanctions Against BellSouth Telecommunications, Inc. for Failure to Comply with TRA Order and respectfully shows the Tennessee Regulatory Authority ("TRA") as follows:

INTRODUCTION

On Monday morning, August 20, 2001, BellSouth received a service copy of MCImetro Access Transmission Services, Inc.'s ("MCImetro") motion seeking imposition of sanctions against BellSouth, which was filed the previous Friday afternoon. This was the first communication BellSouth had received from MCImetro since BellSouth wrote to MCImetro's counsel on August 8, 2001 to discuss the billing and usage calculation dispute between the parties and to reiterate that BellSouth had initiated the dispute resolution provision of the parties' contract to address those disputes. Since July 16, 2001, BellSouth and MCImetro have exchanged several letters addressing their differing view of the process established by their contract for quantifying the traffic on which reciprocal

compensation is based. ***None of these disputes are related to the characterization of ISP traffic.*** In fact, MCImetro's correspondence appears to concede that the current disputes between the parties arise exclusively from the differing interpretation of: (1) the processes established by the Interconnection Agreement for establishing the jurisdiction of calls; (2) the timing for payments of disputed amounts billed under the Interconnection Agreement; and (3) the appropriate method for implementing the true-up provision in that Agreement. Accordingly, it is clear that the parties merely have a billing dispute, and that dispute is unrelated to any matters addressed in the context of Docket No. 99-00662. MCImetro's motion attached only a single letter of the several exchanged between the parties on this subject. BellSouth attaches the complete set of correspondence as Attachments A-E.

The TRA's July 12, 2001 Order required BellSouth to pay what was "due" for ISP-bound traffic, which payments BellSouth had withheld up to that point. BellSouth has now paid every penny formerly withheld on the basis of its ISP argument. What remains is simply a dispute about how to calculate amounts allegedly due -- not a dispute about ISP traffic and not a dispute about anything addressed by the TRA's orders in Docket 99-00662.

Notwithstanding MCImetro's efforts to obscure this fact, the fact remains that the TRA never quantified the amount due as \$10.2 million and MCImetro did not seek to have the TRA calculate a sum certain. BellSouth has explained why it disputes MCImetro's calculation, but MCImetro has aggressively responded by

urging that BellSouth must first pay the \$10.2 million, which MCImetro, not the TRA, has calculated, and then dispute the basis of that calculation after the payment has been made.

The TRA's Order did not address the calculation of a sum certain. Rather it addressed the issue of the proper treatment of ISP-bound traffic. MCImetro's motion, in contrast, addresses BellSouth's refusal to accept MCImetro's calculation of usage. The motion has nothing to do with the ISP issue. To underscore the lack of a nexus between the TRA's Order and the current billing and usage calculation dispute, it is noteworthy that in MCImetro's motion and affidavit, the term "ISP" appears only once -- in a footnote containing an unsupported allegation about BellSouth's invoices -- not to MCImetro, but instead to US LEC. The TRA's Order did not deputize MCImetro to determine conclusively the amount owed. Accordingly, Bellsouth is not in violation of the Order merely because it rejects MCImetro's calculation.

DISCUSSION

I. MCImetro's "Actual Charge Information" Cannot Measure Usage as Asserted, and the Agreement Clearly Requires Use of a PLU.

MCImetro asserts that it can measure usage by "actual charge information" rather than by use of a percent local usage factor, or "PLU." BellSouth has explained to MCImetro why it believes that MCImetro cannot accurately determine the "actual charge information" in the manner it has described, and, in response, MCImetro has simply declined to explain how it is capable of producing such

information. This silence seems to indicate what BellSouth suspected -- MCImetro cannot accurately determine "actual charge information" in the way it asserts.

The contract is clear regarding usage measurement. Section 7 of Attachment IV, entitled "Usage Measurement," clearly and explicitly requires the use of a PLU to facilitate the "proper billing of traffic." Simply stated, the Interconnection Agreement requires the parties to exchange PLUs for the purpose of determining billing.¹ Accordingly, BellSouth's billing to MCImetro is based on the MCImetro-provided PLU. Even if MCImetro now actually believes that the PLU is a poor surrogate for another more accurate method of measuring usage, the parties are required to measure usage in the manner provided by the Interconnection Agreement. The parties are not permitted to assert, when convenient, that another method is superior to the method set forth in the Interconnection Agreement and unilaterally impose that method absent an amendment to the Agreement.

This dispute was not addressed by the TRA Order, and BellSouth should not face sanctions for requiring MCImetro to measure usage as required under the contract. To the extent MCImetro reached the \$10.2 million figure by measuring usage without a PLU, BellSouth disputes that this amount is "due" under the contract.

¹ AT&T and TCG have recently noted in the context of their Petition for Declaratory Relief for Breach of Interconnection Agreement by BellSouth Telecommunications, Inc. that the use of a PLU is required for usage measurement. (See Petition at ¶15.)

II. BellSouth Notified MCImetro's Counsel on July 27, 2001 that it was Invoking the Dispute Resolution Procedure. MCImetro's Response was that BellSouth Must "Pay First and Dispute Later." MCImetro Does Not Pay First and Dispute Later.

As demonstrated by the attached correspondence, Mr. Aronson's affidavit is inaccurate in its assertion that BellSouth has failed to "utilize the dispute resolution procedures in the Interconnection Agreement." Affidavit at ¶15. BellSouth has invoked the dispute resolution process as stated both in its August 8 letter and its July 27 letter. In response, BellSouth was instructed by MCImetro to "pay first, and dispute later." No provision of the Interconnection Agreement requires the parties to pay in advance of the dispute resolution process. If such a provision existed, then BellSouth would have sought to require MCImetro to turn over the millions of dollars it is currently withholding due to billing disputes. BellSouth has not done so because that is not what the well-established course of dealing between the parties requires. BellSouth believes that the consistent course of dealings between the parties clearly demonstrates that neither party believed the Agreement could be reasonably construed to require payment of all amounts billed, whether or not disputed, pending resolution of a dispute. To the extent MCImetro contends that BellSouth must pay the \$10.2 million figure because it failed to invoke the dispute resolution process -- it is simply wrong on the facts as established by the attached correspondence. To the extent that MCImetro asserts that BellSouth must pay the \$10.2 million first and dispute later, MCImetro is wrong in its reading of the contract.

Again, BellSouth should not face sanctions for following the long-standing course of dealing between the parties that payments are withheld during a dispute. Once again, this issue was not addressed by the TRA Order, and MCImetro's own practice has been to withhold payments on disputed amounts.

III. MCImetro Seems to be Saying That it Now Wishes to Decline to Amend the Agreement to Implement TRA-Ordered UNE Rates in Order to Require BellSouth to Pay a Higher Amount of Reciprocal Compensation -- Even Though MCImetro Will be Required to Repay Those Amounts Upon Execution of a New Contract.

MCImetro is complaining because BellSouth has sought to amend the Agreement to impose the current TRA-ordered rates. MCImetro's position amounts to gamesmanship on this issue -- refusing on the one hand to amend the Agreement to implement the new rates and demanding immediate payment of the now obsolete rate. This process would allow MCImetro to hold the overage for as long as MCImetro continues to unreasonably delay amendment of the Agreement.

BellSouth is perplexed by MCImetro's position in light of MCImetro's position to date before the TRA that TRA-ordered UNE rates should be available immediately. It appears that, in this case however, MCImetro wants the immediate benefit of lower UNE rates ordered by the TRA in Docket No. 97-01262 with one exception. MCImetro does not want to amend the Agreement to impose the current end office switching rate, because that rate would reduce the "10.2 million dollar" figure MCImetro has alleged.

BellSouth has supplied MCImetro with a proposed amendment and has offered to amend to incorporate all current TRA-ordered rates. In response,

MCImetro seeks to impose sanctions on BellSouth because BellSouth is attempting to apply TRA-ordered rates, rather than outdated rates, to the Agreement. Given MCImetro's position to date on this issue, it is disingenuous to seek sanctions against BellSouth for trying to ensure that current rates are available to all parties immediately.

CONCLUSION

BellSouth has complied with the TRA's Order by paying MCImetro millions of dollars in reciprocal compensation formerly withheld on the basis of BellSouth's position of treatment of ISP-bound traffic. BellSouth has not, however, agreed that MCImetro's unilateral calculation of \$10.2 million is entitled to the same authority as the TRA Order. BellSouth believes that calculation is inconsistent with the Agreement, and BellSouth is entitled to dispute it under the contract without facing sanctions for doing so.

The TRA Order arose out of a dispute about the nature of ISP traffic, but the current dispute is not about ISP traffic. The TRA ordered BellSouth to pay "all payments due" to MCImetro, and BellSouth has done so. MCImetro did not seek a sum certain in its motion. The TRA did not order BST to pay a sum certain. Moreover, the TRA did not order BellSouth to pay MCImetro "whatever it demanded." The TRA Order did not address the current disputes concerning billing and usage measurement, and MCImetro is not entitled to use that Order to deny BellSouth the right to billing and payment pursuant to the terms of the agreement.

For the foregoing reasons, BellSouth respectfully urges the TRA to deny the Motion.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

Guy M. Hicks

Joelle Phillips

333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

R. Douglas Lackey

E. Earl Edenfield

675 W. Peachtree Street, Suite 4300
Atlanta, Georgia 30375

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2001, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☒ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
414 Union Avenue, #1600
Post Office Box 198062
Nashville, Tennessee 37219-8062

A handwritten signature in cursive script, appearing to read "Julie P. [unclear]", written over a horizontal line.



BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

August 8, 2001

VIA FACSIMILE

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
Post Office Box 198062
Nashville, Tennessee 37219-8062

Re: *Petition of MCI WorldCom to Enforce Interconnection Agreement with
BellSouth*
Docket No. 99-00662

Dear Henry:

Thank you for your letter of August 2, 2001. BellSouth is pleased to see that MCI agrees that none of the matters now at issue between the parties relate to ISP traffic.

As we have said, BellSouth has paid all amounts formerly withheld solely on the basis of our ISP argument, and the remaining disputes arise exclusively from our differing interpretation of: (1) the processes established by the Interconnection Agreement for establishing the jurisdiction of calls; (2) the timing for payment of disputed amounts under the Interconnection Agreement; and (3) the appropriate method for implementing the true-up provision. None of these matters relates to the TRA's ruling on ISP traffic, and none of these issues were addressed by the TRA's recent order. It seems clear that BellSouth and MCI merely have a billing dispute, unrelated to the matters addressed by the TRA in the context of Docket No. 99-00662 concerning instead the following items:

1. The Interconnection Agreement Clearly Requires Use of a PLU to Measure Usage.

Your letter seems to suggest that this issue turns on isolated improper identification of certain toll calls. Respectfully, we believe MCI is missing the point. While we have attempted to use the example relating to "1 +" calls to explain the

Henry Walker, Esquire
August 8, 2001
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inaccuracy of MCI's position on usage measurement, the issue is not "1 + " calls -- the issue is the method set forth in the Interconnection Agreement to determine usage.

MCI's position that it is permitted to determine the jurisdiction of calls in a manner other than that set forth in Section 7 of Attachment IV, entitled "Usage Measurement" is not supported by the language of the Interconnection Agreement. MCI has failed to cite any provision from the Interconnection Agreement permitting it to use signaling information to measure the local traffic for purposes of billing. Rather, MCI has cited provisions from Section 3, of Attachment IV, entitled "Signaling" to suggest that, using ANI and other information, MCI can determine "actual charge information." As discussed in our previous letter, BellSouth refutes that MCI can correctly determine "actual charge information" in this manner. MCI has declined to respond to our request that it explain the manner in which it believes it accurately measures the local usage using this method. We believe that MCI has opted not to address this issue because it cannot demonstrate that it is capable of creating "actual" charge information in this manner.

Notwithstanding the debate about whether MCI could feasibly use the ANI information to measure usage, the Interconnection Agreement is clear that Section 7.3 of Attachment IV (which clearly and explicitly requires use of a PLU) governs the "proper billing of traffic." Thus, even if MCI could measure usage in another manner, MCI has agreed, pursuant to Section 8.2 of Attachment IV, that the parties are required to bill in accordance with Section 7.3's requirement of a usage report containing a PLU.

Simply stated, the Interconnection Agreement requires the parties to exchange PLUs for the purpose of determining billing. Accordingly, BellSouth's billing to MCI is based on the MCI-provided PLU. Even if MCI now actually believes that the PLU is a poor surrogate for another more accurate method of measuring usage, the parties are required to measure usage in the manner provided by the Interconnection Agreement. The parties are not permitted to assert, when convenient, that another method is superior to the method set forth in the Interconnection Agreement and unilaterally impose that method absent an amendment.

Henry Walker, Esquire
August 8, 2001
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2. Surely MCI Does Not Seriously Contend That it Would Agree to a "Pay Now, Dispute Later" Construction of the Interconnection Agreement Requiring Both Parties to Pay All Amounts Billed Subject to a Later Refund After Disputes Are Resolved.

No provision of the Interconnection Agreement says the parties must "pay now and argue later," and MCI has certainly not paid amounts that it has disputed in the past. While the Interconnection Agreement may be silent as to the timing of payment of disputed, but billed, charges, the conduct of the parties speaks volumes about the parties' understanding of this process.

If MCI construes the Interconnection Agreement according to what your letter says, then MCI must immediately pay BellSouth the more than \$4,900,000 that it is currently refusing to pay due to billing disputes. If MCI seriously intends to impose a "Pay Now, Dispute Later" policy on BellSouth, then it must abide by that policy as well. To date, MCI has not done so. MCI has consistently taken the position that it ought not be required to pay disputed charges pending resolution of disputes. For example, attached is a copy of an e-mail from Debra Whitaker, of MCI, informing BellSouth that MCI has "deducted" \$697,882.57 from a BellSouth invoice because MCI disputes the amount billed.

BellSouth believes the consistent course of dealings between the parties clearly demonstrate that neither party believed the Interconnection Agreement could be reasonably construed to require payment of all amounts billed, whether or not disputed, pending resolution of a dispute.

3. Does MCI Actually Mean to Say That it Does Not Intend to Substitute the TRA-Ordered UNE Rates in Order to Avoid a More Reasonable Resolution of the True-Up Issue?

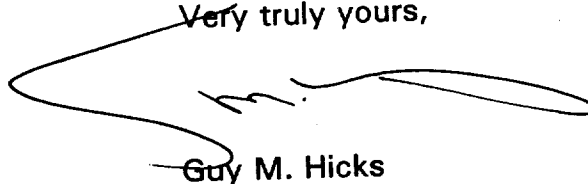
We continue to be perplexed by MCI's position on this point. Does MCI actually intend to decline to amend its agreement to substitute the new TRA-ordered UNE rates? The position seems irreconcilable with MCI's long-standing position that TRA-ordered UNE rates should be immediately available to CLECs. Is it now MCI's position that, in general TRA-ordered UNE rates should be immediately available to CLECs, but that MCI should be able to enjoy the benefit of now-obsolete end-office switching rates in this particular case?

Henry Walker, Esquire
August 8, 2001
Page 4

As we have said, BellSouth believes that we should amend the Interconnection Agreement to include all of the TRA-ordered rates. However, since this discussion deals only with local interconnection rates and as a gesture of good faith, a proposed amendment incorporating the TRA-ordered rates for reciprocal compensation in Docket No. 97-01262 is attached for MCI's review. Finally, as we have already indicated, BellSouth has chosen to initiate the Examination process pursuant to Section 22 of the Interconnection Agreement.¹

While we believe that this is nothing more than a billing dispute, which we are willing to resolve using the procedures available under the contract, BellSouth is certainly willing to make its decision-makers available to discuss these matters before the TRA.

Very truly yours,

A handwritten signature in black ink, appearing to read "Guy M. Hicks", with a long horizontal stroke extending to the right.

Guy M. Hicks

GMH/jej

Enclosure

¹ You will recall that my last letter quoted the text of Section 22.4, which we believe to be consistent with our position that the Interconnection Agreement does not require payment of disputed amounts pending the resolution of the dispute. Rather, Section 22.4 expressly references payment following receipt of the final audit report.

icks, Guy

From: debra.whitaker@wcom.com
To: Ramsey, Valerie
Cc: Clark, Cindy; Clett, Robyn; Moorman, Michelle; Alhagi.Mbowe@wcom.com;
Donna.Kelsick@wcom.com
Subject: LIDB and Outstanding Disputes

Valerie,

All LIDB credits have been deducted from the 4/19 cycle. The total amount that was deducted was \$697,882.57. Also, I would like to get an update on several other issues that are still outstanding with BST.

1. INVALID USOCS
2. DISCONNECTED CIRCUITS
3. CANCELLATION CHARGE

If these are claims that you are not currently working with, would you please point me in the right direction, so that we can get an idea how much longer it will take to get these issues resolved.

Thank you,

Deborah Whitaker
(7707) 625-6852

**Amendment to the Interconnection Agreement
By and Between BellSouth Telecommunications, Inc.
And MCImetro Access Transmission Services, Inc.
Dated April 4, 1997**

Pursuant to this Amendment, (the "Amendment"), MCImetro Access Transmission Services, Inc. ("MCIIm"), and BellSouth Telecommunications, Inc. ("BellSouth"), hereinafter referred to collectively as the "Parties," amend that certain Interconnection Agreement between the Parties dated April 4, 1997 ("Agreement").

WHEREAS, BellSouth and MCIIm desire to amend the Agreement to incorporate rates for local interconnection established by the Tennessee Regulatory Authority ("TRA") in Docket No. 97-01262, on December 19, 2000, as amended by BellSouth's corrected submissions of January 31, 2001 and February 12, 2001.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties amend the Agreement as follows:

1. Those permanent rates established by the TRA in Docket No. 97-01262 for Local Interconnection in Tennessee are as set forth in Exhibit 1-TN, attached hereto and incorporated herein by this reference. In accordance with Section 1.1 of Attachment I of the Agreement, these rates shall be effective as of April 4, 1997, and the Parties hereby agree to "true-up" billing based on these rates from the Effective Date of the Agreement.
2. To the extent that any rate element set forth in Exhibit 1-TN corresponds to a rate element set forth in Attachment I, Table 1 of the Agreement, all such rate elements and rates are hereby deleted in their entirety and replaced with the corresponding rate elements and rate in Exhibit 1-TN.
3. Any rate element and rate in the Agreement that is not expressly replaced by the rates and rate elements set forth in Exhibit 1-TN as described in paragraph 2 above shall remain in full force and effect in accordance with the terms of the Agreement.
4. To the extent MCIIm and BellSouth have not previously negotiated terms and conditions corresponding to any rate element set forth in Exhibit 1-TN, then any order for such element shall be provisioned in accordance with the terms and conditions set forth in the Competitive Local Exchange Carrier Tariff for the State of Tennessee, incorporated herein by this reference.
4. All of the other provisions of the Agreement, dated April 4, 1997, shall remain in full force and effect.
5. Either or both of the Parties is authorized to submit this Amendment to the respective state regulatory authorities for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective duly authorized representatives on the date indicated below.

MCImetro Access Transmission Services, Inc.

BellSouth Telecommunications, Inc.

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

**LOCAL INTERCONNECTION
Tennessee**

Exhibit 1-TN

CATEGORY		NOTES	LOCAL INTERCONNECTION	Isolated	Zones	BCS	USOC	RATES				OSS RATES																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
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LOCAL INTERCONNECTION
Tennessee

Exhibit 1-TN

7/25/01

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BOULT CUMMINGS
CONNERS BERRY PLC

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@boultoncummings.com

August 2, 2001

Guy M. Hicks, Esq.
BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, TN 37201-3300



Re: Petition of MCI WorldCom to Enforce Interconnection Agreement with
BellSouth Telecommunications, Inc.
Docket No. 99-00662

Dear Guy:

On behalf of MCI WorldCom, I am responding to your letter of July 27, 2001. I appreciate the conciliatory tone of your letter and BellSouth's stated willingness to look into these disputes further in an effort to resolve them.

Nevertheless the contract requires that you pay now and argue later. Section 3.2.7 of Attachment VIII states, "BellSouth and MCI shall issue all Connectivity Bills in accordance with the terms and conditions set forth in this Section 3 ["Connectivity Billing and Recording.]" Section 3.1.15 states, "Subject to the terms of this Agreement, including without limitation Section 3.1.18 of this Attachment VIII [The "Bill Reconciliation" provisions] MCI shall pay BellSouth within thirty (30) days from the issue date of the bill." Pursuant to Section 3.2.7, quoted above, the same requirement applies when MCI metro bills BellSouth.

In other words, bills for connectivity must be paid within thirty (30) days. Following payment, either party, may invoke the "Bill Reconciliation" provisions as well as the "Audits and Examinations" provision set forth in Part A, Section 22. Should the "Bill Reconciliation" process show that a bill was incorrect, the Agreement provides for reimbursement or credits. Section 3.1.19. Similarly, there may be "adjustments, credits, or payments" made following an audit. Section 22.4 of Part A.

There is no provision in the Agreement stating that one party is entitled to withhold payment simply because the party disputes the accuracy of a bill.

The other issues raised in your letter merit a short response:

1. You state that MCI WorldCom may have incorrectly identified some "1+" calls as toll calls rather than local calls. As stated in the Agreement itself, local traffic is identified based on the "NXXs" of the originating and terminating numbers. I do not believe that the situation you describe applies to any customers located in the area served by MCI metro, but if you believe that MCI WorldCom has improperly identified any such calls, you can raise that issue in accordance with the "Bill Reconciliation" procedures in the Agreement.

Guy M. Hicks, Esq.
August 2, 2001
Page 2

2. The Agreement states (Part A, Section 1) that the interconnection rates contained therein shall remain in affect pending the adoption of a new contract. Absent an order from the TRA, BellSouth may not unilaterally change the reciprocal compensation rates contained in the Agreement. (Unlike some other carriers, MCI WorldCom has not elected to substitute the TRA's new UNE rates for the rates contained in the Agreement.)

3. The dispute over the number of minutes must be addressed using the "Billing Reconciliation" Procedures described in the Agreement.

I have come to the conclusion that the issues raised by BellSouth are not serious and, in any event, can be addressed under the procedures described in the Agreement. Given BellSouth's disregard for those procedures in favor of extra-legal, "self-help," I have further concluded that those individuals at BellSouth who have authorized payment of only one-third of the total amount MCI WorldCom is owed are willfully disobeying the intent of the TRA's July 12, 2001 Order. Should we have to take this matter back to the TRA, I will ask that Mr. Hendrix and others who are responsible for this decision be subpoenaed to testify before the agency. If I succeed in showing that BellSouth has willfully disregarded a TRA Order to pay reciprocal compensation, I'm sure you can appreciate the impact such a decision will likely have on other, pending regulatory dockets at the TRA and the FCC.

Please telephone Mickey Henry or me by the end of the day on Tuesday, August 6, regarding whether BellSouth intends to give MCI WorldCom a check for the entire amount of the bill. Following payment, BellSouth may then initiate the appropriate dispute resolution procedures as provided in the Agreement.

Thank you again for the cooperative attitude expressed in your letter. I regret I cannot answer in the same spirit.

Regards,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:



Henry Walker

HW/nl



BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

July 27, 2001

VIA FACSIMILE 615/252-6363

Henry Walker, Esquire
Boult, Cummings, Conners & Berry
Post Office Box 198062
Nashville, Tennessee 37219-8062

Re: *Petition of MCI WorldCom to Enforce Interconnection Agreement with
BellSouth*
Docket No. 99-00662

Dear Henry:

Thank you for your letter of July 23, 2001. We have reviewed both your letter and the letter from Dan Aronson with our clients. We are hopeful that this response will assist the parties in resolving the remaining disputes with respect to MCI's claim and the TRA's recent Order.

As an initial matter, BellSouth wishes to make this clarification. While BellSouth has, as you know, strenuously argued that ISP traffic is interstate in nature and reciprocal compensation is not due for such traffic, BellSouth recognizes that the TRA has rejected BellSouth's position on that issue. Accordingly, BellSouth is no longer withholding any payment to MCI on the basis of that argument. BellSouth has now paid every cent that it was withholding solely on the basis of that position. As your correspondence implicitly recognizes, the remaining disputes between the parties arise out of the parties' differing views concerning either the construction of the contract between the parties or specific factual circumstances, and do not relate to BellSouth's legal position regarding ISP traffic. As you know, the TRA ordered BellSouth to pay amounts previously withheld that are "due" under the contract. The only remaining disputes relate to the appropriate calculation of what amount is actually "due."

Henry Walker, Esquire
July 27, 2001
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We appreciate your letters articulating MCI's position on these remaining disputes about the calculation of the amount owed, and we are hopeful that we can move toward resolution of these disputes by addressing each issue in turn:

1. Calculation of Amount of Traffic Using "Actual Charge Information."

As we understand it, MCI's position is that the use of "actual charge information" is permitted under the contract, rather than the use of a PLU factor in order to quantify the traffic on which reciprocal compensation is based. In our view, the agreement of the parties, as reflected by the contract, is that the PLU would be used for billing purposes and the parties never contemplated that they would attempt to determine, for every call exchanged, the particular jurisdiction of the call. MCI has come to this position late, and it does not reflect the agreement of the parties. Moreover, the appropriateness of BellSouth's position in this regard is obvious.

MCI has taken the position that, by using "actual charge information," it is able to determine the actual portion of local versus toll traffic sent to MCI by BellSouth, and that this is more accurate and therefore preferable to the use of the BellSouth provided PLU. Quite frankly, we are at a loss to understand how MCI could take the position that it is able to separate the traffic that BellSouth sends to MCI, so as to obtain "actual charge information." While it is quite true that we are sending ANI to MCI, MCI cannot possibly know which of our customers have elected a local calling plan that still requires the dialing of the call using "1+." Similarly, we do not understand how MCI could determine "actual charge information" regarding calls that were dialed using "1+," but that were actually toll free intracounty calls. That is precisely why the contract specifically calls for the use of a PLU, which BellSouth is required to provide to MCI after the end of each quarter. If your client can explain to us, which it has not been able to do to this point, how it is correctly identifying such calls, we will be happy to consider your client's position further. To put a point on this discussion, to the extent MCI is assuming that all "1+" calls are toll calls, rather than local calls, its "actual" charge information could not accurately reflect the portion of traffic that is local.

In the absence of an accurate manner in which to distinguish such "1+" dialed calls, BellSouth respectfully disagrees with the premise of MCI's argument

Henry Walker, Esquire
July 27, 2001
Page 3

that the "actual" data is available and therefore preferable to a calculation using the PLU.

2. Appropriate Procedure for "True Up."

We understand that MCI has taken the position that, even though a new rate has been ordered by the TRA, the contract requires BellSouth to operate on the basis of rates other than the TRA-ordered rates now in effect and seek reimbursement at a later date. We are surprised by this position in light of MCI's position to date before the TRA that the TRA-ordered UNE rates should be immediately available to MCI. It appears that MCI wants the "immediate" benefit of lower UNE rates ordered by the TRA in Docket No. 97-01262 with one exception. MCI does not want the end office switching rate ordered by the TRA because that rate would undercut MCI's \$10.2M claim.

BellSouth is willing to resolve this matter by executing an amendment to the agreement to provide that all of the TRA-ordered rates shall be applicable to MCI. If this is not an acceptable resolution of this issue to MCI, please explain which of the TRA-ordered rates MCI believes should, and which should not, be applicable to MCI.

3. Usage Disputes.

With respect to the usage discrepancy between the parties, BellSouth has attempted to explain its position and negotiate with MCI to determine the accurate figure. BellSouth does not believe that the discrepancy is attributable to inclusion of ported numbers as MCI has alleged. We understand that MCI contends that BellSouth is required to either pay the amount demanded or institute an audit proceeding pursuant to Section 22.2 of the Agreement.

BellSouth had hoped that the parties would be able to determine the accurate figure through exchange of information without triggering the audit or examination process contemplated by Section 22. However, if MCI prefers to address this discrepancy through the examination procedure, BellSouth will agree to institute the examination process under Section 22.4 of the Agreement in order to investigate the basis for MCI's inclusion of the 166 million minutes of use at issue. That section clearly anticipates that payment will be made regarding such a

Henry Walker, Esquire
July 27, 2001
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billing dispute only after the examining party receives the results of the audit or examination.

22.4 Adjustments, credits or payments, including any underbilling, shall be made and any corrective action shall commence within thirty (30) days from the audited or examined party's receipt of the final audit report to compensate for any errors or omissions which are disclosed by such Audit or Examination and are agreed to by the parties.

4. Application of Tariffed Rates.

We understand that MCI apparently disputes the 700,000 figure determined by BellSouth. Please clarify what MCI believes the correct figure to be and the basis for that figure.

5. Additional Payments.

As we understand your latest correspondence, MCI will revise its schedule to reflect all payments received by BellSouth since the schedule was created.

BellSouth respectfully rejects Mr. Aronson's assertion that it is "disregarding the TRA's order." BellSouth has already paid all amounts withheld solely on the basis of its ISP traffic argument. BellSouth is merely attempting to determine the correct amount owed under the terms of the parties' contract. We look forward to working with you to resolve these issues either through continued discussion or, if necessary, with the assistance of the TRA.

Sincerely yours,



Guy M. Hicks

GMH/jej



BOULT ■ CUMMINGS
CONNERS ■ BERRY PLC

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July 23, 2001

Guy M. Hicks, Esq.
BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, TN 37201-3300

Re: Petition of MCI WorldCom to Enforce Interconnection Agreement with
BellSouth Telecommunications, Inc.
Docket No. 99-00662

Dear Guy:

Attached is the response from WorldCom concerning the \$10 million reciprocal compensation payment ordered by the TRA.

I'm told by WorldCom that BellSouth initially raised some of these same issues in Florida but that, when the FPSC staff set up a meeting and the BellSouth attorneys reviewed the issues, a settlement was quickly reached. The reason, I'm told, is that BellSouth's attorneys came to the conclusion that the arguments raised by Mr. Hendrix would not likely hold up in an enforcement proceeding. Judge for yourself:

1. The contract provides for the payment of reciprocal compensation for local calls. Local calls are defined in the contract based on NXXs and on BellSouth's tariffs. For that purpose, the contract requires BellSouth and MCI to exchange NXX information and CCS signaling information so that the parties will know exactly how to bill such calls.

The bills sent by MCI are based on actual usage, applying the NXX and CCS information described above. There is nothing in the contract requiring that MCI disregard that information and bill instead based on a PLU supplied by BellSouth. Absent such a provision, I don't think you will convince anyone that the parties should disregard actual usage in favor of an inaccurate PLU.

2. As soon as there is a new interconnection agreement in place with a new reciprocal compensation rate, BellSouth and WorldCom will do a true-up back to April, 2000. That's what the contract says. You can't do a true-up now just because you want to.

July 23, 2001

Page 2

3. According to the contract, each party bills the other for terminating minutes based on standard AMA recordings. If your own records show a different number of minutes, you can request an audit. You can't simply withhold payment. (I'm told that BellSouth's measurement of minutes going to WorldCom doesn't include minutes which go to ported numbers, hence the discrepancy.)

I think that if you take a look at the issues raised by Mr. Hendrix, read WorldCom's response, and review the contract itself, you will come to the conclusion that none of this warrants going back to the TRA.

In any event, WorldCom would appreciate a response from you or Mr. Hendrix to this letter by Wednesday so that WorldCom can decide how next to proceed. (Since both you and Charlie were on the phone when we last discussed this, I am copying him on this reply.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

Henry Walker

HW/nl

c: Charles Howorth, Esq.



Daniel Aronson
Director, Carrier Access Billing
500 Clinton Center Drive Clinton, MS 39056
Phone: 601-460-8060 Fax: 601-460-5115
Email: Daniel.Aronson@Wcom.com

July 20, 2001

Mr. Jerry Hendrix
BellSouth Telecommunications, Inc.
Room 34s91 BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375

Mr. Hendrix:

I am in receipt of your letter to Marcel Henry dated July 16, 2001 regarding your refusal to pay the full amounts due to WorldCom as ordered by the Tennessee Regulatory Authority (TRA) on June 15th, July 10th, and July 12th of this year.. As you are aware, the TRA orders require BellSouth to pay all amounts due by Friday, July 13th, and your withholding of approximately \$7.3 million of the \$10.2 million due constitutes a blatant violation of the TRA's clear order and a breach of the interconnection agreement (Agreement) between MCI and BellSouth

Regarding your assertions used to justify your non-payment, I have the following responses:

1. APPLICATION OF BELL SOUTH PROVIDED PERCENTAGE OF LOCAL USE FACTORS

Per the Agreement and preferred industry practices, MCI utilizes actual charge information provided to MCI from BellSouth via the SS7 signaling networks in determining the amount of traffic that is local and toll when developing its bills to BellSouth. BellSouth's withholding of \$3.5 million is based upon ignoring MCI's measurements and replacing them with BellSouth's own PLU, which is not allowed per the Agreement.

Per Attachment IV, Section 2.2.1.1 of the Agreement, BellSouth is to provide NXX information to allow the use of actual charge information:

2.2.1.1 BellSouth shall provide to MCI, on diskette(s) or in any other manner that the parties agree to, on a one-time basis when requested by MCI, an all-inclusive list (BellSouth, LEC, CLEC and EAS NXX's) of NXX's pertaining to section 2.2.1, above, that creates parity with that which BellSouth provides to itself. MCI may require, upon request, updates to this list.

Had MCI not intended to rate traffic on the basis of recorded indicators, provision of certain information indicated below would not have been stipulated in the contract. Per Attachment IV, Section 3.2, BellSouth is to provide signaling information necessary to allow actual billing:

"All CCS signaling parameters will be provided including automatic number identification (ANI), originating line information (OLI), calling party category, charge number, etc."

Mr. Jerry Hendrix

July 16, 2001

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Finally, Attachment IV, Section 7.3 provides *that both parties are to provide total traffic volume broken out by call type (local, toll, and other)...* as well as a PLU. Nowhere in the Agreement does it provide for BellSouth's to override MCI's measurements by use of their own PLU.

Attachment VIII, Section 3 sheds light on the parties intended use of PLUs. :

BellSouth shall bill MCI for the Connectivity Charges incurred; provided that, for those usage based Connectivity Charges where actual charge information is not determinable by BellSouth because the jurisdiction (i.e., interstate, interstate/interLATA, intrastate, intrastate/ intraLATA, local) of the traffic is unidentifiable, or for other reason, the parties shall jointly develop a process to determine the appropriate charges.

This language provides clear guidance that the parties intended for PLUs and other means to be used only in instances where actual charge information is not available. This was clearly not the case in the relationship between MCI and BellSouth.

2. APPLICATION OF TRUE UP

Per the Agreement, retroactive rates are only to be applied after a new agreement has been executed and approved. As this has not occurred in Tennessee between MCI and BellSouth, no true up is required. The Agreement does not allow parties to unilaterally apply a true up in anticipation of a new contract. Thus, the rate of \$.004 is the appropriate rate and BellSouth's \$2.6 million claim is not allowed per the Agreement.

3. USAGE DISPUTES

Per the Agreement, BellSouth has not properly raised its disputes regarding usage measurements, and thus your withholding of \$1 million is inappropriate and in violation of the contract. Per Section 7.1 of Attachment IV of the agreement, the carrier that is on the terminating end of the call (in the case MCI) is responsible for measuring usage and preparing the invoice. BellSouth's attempt to use originating usage as a means of developing charges is not allowed per the Agreement.

7.1 Each party shall calculate terminating interconnection minutes of use based on standard Automatic Message Accounting (AMA) recordings made within each party's network. These recordings being necessary for each party to generate bills to the other party

If BellSouth had sought support for MCI's usage measurements, the appropriate means to resolve such a dispute would have been for BellSouth to request an audit of MCI's records, Per Sections 22.2 of attachment A of the Agreement. The Agreement does not allow BellSouth to avoid the audit process and use its own unsupported estimated traffic measures as a means of avoiding payment.

22.2 Upon thirty (30) days written notice, either party shall have the right through its authorized representative to make an Audit or Examination, during normal business hours, of any records, accounts and processes which contain information bearing upon the provision of the services provided and performance standards agreed to under this Agreement. Within the above-

Mr. Jerry Hendrix
July 16, 2001
Page 3 of 3

described 30-day period, the parties shall reasonably agree upon the scope of the Audit or Examination, the documents and processes to be reviewed, and the time, place and manner in which the Audit or Examination shall be performed. Both parties agree to provide Audit or Examination support, including appropriate access to and use of facilities (e.g., conference rooms, telephones, copying machines).

4. APPLICATION OF MCI_{Im} TARIFFED INTRASTATE ACCESS RATES

This matter has been brought to the attention of BellSouth in a variety of past conversations and items of correspondence. We have provided the pages with the tariffed rates to you repeatedly. We appreciate that you are now withdrawing this claim as unsupportable. We do not accept your estimate of \$700,000 as the total amount due for intrastate access charges as the total computation is dependent both upon the invoiced usage, the jurisdiction as measured in accordance with the Agreement and the MCI_{Im} tariffed rate.

5. ADDITIONAL PAYMENTS

Because your letter specifies no dates, amounts or associated invoice identification we are unable to address this issue other than to inform you that we were advised on the prescribed application of a payment in the amount of \$6,045.08 on July 10, 2001. This information had not been provided to us at the time the referenced schedule was created. We would expect to adjust the total amount due per our records accordingly.

In summary, Jerry, we believe that BellSouth is blatantly disregarding the clear order of the TRA, the Agreement, and traditional business and industry practices. We intend to alert the TRA of your actions and utilize any available legal means to enforce the TRA's order and the Agreement.

Sincerely,

Daniel Aronson

CC:

Mr. Jerry Hendrix
July 16, 2001
Page 4 of 4

per Jerry Hendrup
Sent via email to
Marcel Henry
7/16/01

July 16, 2001

Mr. Marcel Henry
Title
Company
Address
City, State, Zip

Re: TN/MCI Payment

Dear Mr. Henry:

As I am sure you are aware, the Tennessee Regulatory Authority ordered BellSouth to pay MCImetro, under the April 4, 1997 Interconnection Agreement, for ISP-bound traffic at the end office rate. BellSouth has reviewed the information MCI provided to BellSouth regarding your calculation of the \$10.2M claim and has found some significant discrepancies in MCImetro's calculation.

First, BellSouth found that MCImetro used the incorrect Percent Local Usage ("PLU") factor in calculating the amount that BellSouth owes MCI. As you are aware, under Section 7.3 of Attachment V of the MCI/BellSouth Interconnection Agreement, BellSouth determines the PLU for BellSouth-originated traffic. Pursuant to Section 8.2, MCI may request an audit of the provided PLU factors. MCI does not, however, have the right to disregard the use of BellSouth's PLU for BellSouth originated traffic. As such, BellSouth has adjusted the amount paid to reflect the correct PLU. This adjustment is approximately \$3.5M.

Second, per its terms, the April 4, 1997 Interconnection Agreement expired on April 3, 2000. That Interconnection Agreement had a provision that provides that the rates, terms, and conditions agreed to in a subsequent agreement (i.e. the pending arbitration) will be retroactive back to the expiration date. Accordingly, BellSouth paid for local ISP usage at the rate of \$.004 through April 3, 2000, and, per the TRA's order in the 97-01262 docket (June 15, 2001), has applied the approved end off switching rate of \$.0008041 from April 4, 2000 to present. Because BellSouth paid reciprocal compensation for a time period (April 4, 2000

Attachment E

Mr. Marcel Henry
July 16, 2001
Page 2

through June 14, 2001), the effective date of the FCC's order confirming ISP traffic as interstate subject to FCC jurisdiction, that will be covered under the new agreement pending before the TRA, BellSouth reserves the right to true-up those amounts paid consistent with the TRA's anticipated Arbitration Order and FCC mandate. Using the correct end office rates as described above resulted in an adjustment of approximately \$2.6M.

Third, BellSouth found that MCImetro invoiced approximately 166 million minutes (of approximately 1.3 billion total minutes) of use that appear unsubstantiated. This discrepancy is the result of MCI reporting more terminating minutes than BellSouth's switches show that we originated. As such, BellSouth adjusted the amount paid to exclude these minutes. BellSouth would welcome the opportunity to discuss these minutes and the differences in our records. However, as the originating carrier, BellSouth believes that its records as to the amount of originated traffic are accurate. This difference of minutes of use resulted in an adjustment of approximately \$1M.

Fourth, MCImetro invoiced BellSouth for intraLATA access at rates of approximately \$.06 per minute of use. BellSouth could not confirm these rates at the time the payment was made. Subsequent to wiring the monies, BellSouth obtained a copy of MCImetro's tariff. Because at the time the monies were wired BellSouth did not possess the MCI tariff, BellSouth included in the already wired amount payment for the intraLATA access at BellSouth tariff rates. However, BellSouth plans to immediately make an additional payment to MCImetro based on the appropriate rates in MCI's tariff. This amount is valued at approximately \$.5M.

Finally, BellSouth made several payments to MCI that were not reflected on the MCI spreadsheet. After adjusting for unrecorded payments and the adjustments discussed above, together with the resulting reduction in interest penalties for MCImetro's overstated amounts due, BellSouth wired \$2,223,231 to MCImetro last night. BellSouth will make an additional payment to MCI of approximately \$500,000 as mentioned above to account for MCI's tariff intraLATA rates, which BellSouth would note are approximately 15 times higher than BellSouth's intraLATA rates. We stand ready to discuss the discrepancies between our switch's record of originating minutes versus MCI's claim of terminating minutes.

Mr. Marcel Henry

July 16, 2001

Page 3

If you have any questions, please contact me. Additionally, you can contact Richard McIntire at (205) 724-0246 for further information.

Sincerely,

Jerry D. Hendrix

cc: Kip Edenfield, BellSouth
Richard McIntire, BellSouth